

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Andrew L Hardy

Write the full name of each plaintiff.

17 CV 9801

CV
(Include case number if one has been assigned)

-against-

Forest City Realty Trust

Alan Schmiedicker

Write the full name of each defendant. The names listed above must be identical to those contained in Section I.

Do you want a jury trial?

☒ Yes ☐ No

JUDGE ROMÁN

FILED
U.S. DISTRICT COURT
2017 DEC 14 PM 4:32
S.D. OF N.Y.W.P.

EMPLOYMENT DISCRIMINATION COMPLAINT

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. PARTIES**A. Plaintiff Information**

Provide the following information for each plaintiff named in the complaint. Attach additional pages if needed.

Andrew L Hardy
 First Name Middle Initial Last Name

91 Stebbins Rd
 Street Address

Putnam Carmel N.Y 10512
 County, City State Zip Code

(914) 490-0558 Sp142150@yahoo.com
 Telephone Number Email Address (if available)

B. Defendant Information

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. (Proper defendants under employment discrimination statutes are usually employers, labor organizations, or employment agencies.) Attach additional pages if needed.

Defendant 1: Forest City Realty Trust
 Name

1 Metrotech Center 22nd Fl Att. Legal
 Address where defendant may be served

Kings County - Brooklyn N.Y 11201
 County, City State Zip Code

Defendant 2: Alan Schmiedicker
 Name

1 Metrotech Center
 Address where defendant may be served

Kings CTY
Brooklyn N.Y 11201
 County, City State Zip Code

Defendant 3:

 Name

 Address where defendant may be served

 County, City

State

Zip Code

II. PLACE OF EMPLOYMENT

The address at which I was employed or sought employment by the defendant(s) is:

Ridge Hill

Name

73 Market St

Address

Westchester, Yonkers

County, City

N.Y.

State

10710

Zip Code

III. CAUSE OF ACTION**A. Federal Claims**

This employment discrimination lawsuit is brought under (check only the options below that apply in your case):

- ☒ **Title VII of the Civil Rights Act of 1964**, 42 U.S.C. §§ 2000e to 2000e-17, for employment discrimination on the basis of race, color, religion, sex, or national origin

The defendant discriminated against me because of my (check only those that apply and explain):

- ☒ race: *Black*
- ☐ color: _____
- ☐ religion: _____
- ☐ sex: _____
- ☒ national origin: *Jamaican*

- ☐ **42 U.S.C. § 1981**, for intentional employment discrimination on the basis of race

My race is: _____

- ☐ **Age Discrimination in Employment Act of 1967**, 29 U.S.C. §§ 621 to 634, for employment discrimination on the basis of age (40 or older)

I was born in the year: _____

- ☐ **Rehabilitation Act of 1973**, 29 U.S.C. §§ 701 to 796, for employment discrimination on the basis of a disability by an employer that constitutes a program or activity receiving federal financial assistance

My disability or perceived disability is: _____

- ☐ **Americans with Disabilities Act of 1990**, 42 U.S.C. §§ 12101 to 12213, for employment discrimination on the basis of a disability

My disability or perceived disability is: _____

- ☐ **Family and Medical Leave Act of 1993**, 29 U.S.C. §§ 2601 to 2654, for employment discrimination on the basis of leave for qualified medical or family reasons

B. Other Claims

In addition to my federal claims listed above, I assert claims under:

- ☒ **New York State Human Rights Law**, N.Y. Exec. Law §§ 290 to 297, for employment discrimination on the basis of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status
- ☒ **New York City Human Rights Law**, N.Y. City Admin. Code §§ 8-101 to 131, for employment discrimination on the basis of actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation, alienage, citizenship status
- ☒ Other (may include other relevant federal, state, city, or county law):

_____ *DeFamation* _____

IV. STATEMENT OF CLAIM

A. Adverse Employment Action

The defendant or defendants in this case took the following adverse employment actions against me (check only those that apply):

- ☐ did not hire me
- ☐ terminated my employment
- ☐ did not promote me
- ☐ did not accommodate my disability
- ☒ provided me with terms and conditions of employment different from those of similar employees
- ☐ retaliated against me
- ☒ harassed me or created a hostile work environment
- ☒ other (specify): Defamatory discussions with others
in the workplace demeaning my character with false & baseless claims

B. Facts

State here the facts that support your claim. Attach additional pages if needed. You should explain what actions defendants took (or failed to take) *because of* your protected characteristic, such as your race, disability, age, or religion. Include times and locations, if possible. State whether defendants are continuing to commit these acts against you.

As the only Black General Manager in the Company I was
& wrongfully denied my 2016 Bonus & 2017 merit increases which were
received by my non Black counterparts at other properties in the Retail
division. By intentionally omitting my accomplishments in 2016
Alan Schmiedicker and FCRT created a Disparate impact
in the biased approach in assessing my performance for
2016. See attached for more detail

As additional support for your claim, you may attach any charge of discrimination that you filed with the U.S. Equal Employment Opportunity Commission, the New York State Division of Human Rights, the New York City Commission on Human Rights, or any other government agency.

December 14, 2017

B. Facts Continued:

As an employee that has worked my way up with the company for 29 years including 4 promotions under Forest City Ratner the NY group and including this particular project since open in (2011) I have had an unblemished record with nothing but excellent reviews and support from those I have worked with on a daily basis.

During the review period of 2016 I received several commendations from Senior Management such as a National energy savings award recognizing my efforts in implementing strategic and energy reduction initiatives saving the company in excess of 200k annually. Written congratulations regarding my efforts in supporting complex transitions to a REIT as well as a new Joint Venture back to back. Spearheading and leading the project management and completion of the new LOWE'S site pad one of the largest and most important development projects at the site and overseeing the construction of their building totally outside of my scope of work.

Alan Schmiedicker purposely and intentionally omitted any and all of my contributions to the project for 2016 and refused to engage John Bowen whom I reported to for 8 months out of the review year. While working over and beyond my written job description and at the request of John Bowen VP and Director of Operations, my oversight of the construction at Ridge Hill yielded the company substantial savings when they eliminated the Construction Management Consultant and the Development team. Under my leadership and direction the following projects were successfully completed and delivered on time. .

- LOWE'S Site Pad and commencement of the building.
- Encore Shoes
- QDOBA Mexican Restaurant
- Holiday house
- ROCK N JUMP Trampoline park..

By purposely and intentionally omitting all of my achievements including maintaining the day to day functions of the project Mr Schmiedickers intent to cause financial harm on meritless and baseless untruths while discussing me in a defamatory manner to others and holding back goal bonuses which were set in compliance with company standards and met successfully while the other General Managers with similar or less tasks and responsibilities further supports that based on my race I was subjected to significantly different standards from my non black counterparts.

December 14, 2017

MR Schmiedicker purposefully and willfully ignored my request for an action plan to address the concerns he outlined in the review (attached) in which he used to withhold my merit increase for 2017. He opted to avoid addressing through any mediation the items referenced in the review. Though the review was vague and baseless, utilizing the action plan as a measurable tool would have or could have eliminated the subjective approach to my performance but was intentionally avoided. While choosing to ignore FCET policy MR Schmiedicker maliciously avoided using a resource which has been used in the company for other employees to further harass and create an unpleasant environment for me.

The aggression to harass and demean me continued past the review period as Alan Schmiedicker commented to me on a visit in May of 2017 that Ridge Hill was the only "Property he had to travel to" specifically because the investor visit being conducted by QIC our joint venture Partner did not believe I had a handle on the market Place suggesting that I was the only incompetent General Manager of the group. When I asked who specifically had the concern he stated that Joe Tagliola a senior member of QIC had made that claim but refused to elaborate on any specifics to support the statement. The insinuation of my inability to meet with any corporate visits though I have successfully done so on many occasions was another attempt to demean me as he specified that Ridge Hill was the only site where the Partners did not have the confidence in the General Manager. As the only Black General Manager within the company I was deeply offended by the insinuation of Alan's comment attacking my competence as a General Manager.

During the visit referenced above in May of 2017 Alan Schmiedicker took the opportunity to corner me creating an uncomfortable situation in the Conference room by confronting me in a threatening manner in which he accused me of encouraging my Assistant David Shore of going over his head to query the premise of his bonus.

He advised me that HR advised him that I approved of David proceeding with his query, which was not the case. His manner was threatening, unprofessional and unwarranted and displayed a bully mentality to say the least. I advised David of the event after it occurred and he was offended and shaken by it. That situation left both David and myself concerned about the bully tactics and unprofessional behavior displayed by MR Schmiedicker which created a lasting impact of negativity and fear within the office.

December 14, 2017

Alan Schmiedicker has engaged in practices of strategically admonishing me in conflicts which have arisen with other departments such as security. While on multiple occasions we have called out verifiable challenges within the department Alan selectively chose sides with the corporate support in spite of the fact that those challenges had adverse impacts on the project or created hardships to the property which currently still exists. Upon a lack of response from our corporate security regarding the departments inability to maintain proper staffing levels at the project Alan chimed in on a call in August of 2017 attended by myself, the Security Director Lakeyma White and the Assistant General Manager David Shore with corporate security and began to ask me why I was being difficult with them. When I advised him that we are simply trying to identify the causes and cures of the problem and why he was not tasking them on the problem his answer was "They don't work for me".

The continued lack of acknowledgement or any vote of confidence since my involvement with MR Schmiedicker has only added to the negative environment and in which those associates who are my reports feel and express even though he is remotely stationed in our corporate office in OHIO.

Since my involvement with MR Schmiediecker I have had to endure so much stress within the office as our volatile relationship due to his behavior and actions has created in cases and instances a hostile environment in which I at times need to buffer to protect the staff members whom I deal with on a day to day basis to ensure that they have a healthy work environment within the office.

December 14, 2017

In Summary

The negative review and Disparate actions of Mr Schmiedicker has harmed Me financially, costing me an annual merit increase and significantly lowering my bonus and has also jeopardized my long-term career prospects with Forest City. The fact that Mr. Schmiedicker would issue such an assessment of me after having supervising me for only four months – not to mention the previous 28 years of successful performance within the company– is very concerning. Moreover, the review is riddled with racially coded criticisms including but not limited to, that I am “stubborn,” “unwilling to listen,” that I have an “island mentality,” and that he “must understand that those he talks to may have more experience” than him. As this is not the first time Mr. Schmiedicker has attempted to undermine Me. In 2011, he unfairly demoted me to the position of Assistant GM preferring a “different look” for the role of GM (i.e. Curt Fickeissen, who is Caucasian). Despite the setback, I continued to work extremely hard, effectively running the project and demonstrating my value as a GM. Which resulted in me being promoted back to the title of GM in 2013 while Mr. Schmiedicker was temporarily out of the picture. Finally, as the only black General In Denying my bonuses while others received theirs and in utilizing the review to further create financial impact it is clear that there was an intent to harm me financially for some reason.

Accordingly, it seems that Alan Schmiedicker and Forest City’s conduct has violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, the New York State Human Rights Law, N.Y. Executive Law §§ 290, *et seq.*, and the New York City Human Rights Law, New York City Administrative Code §§ 8-101, *et seq.* And is the basis for this complaint.

V. ADMINISTRATIVE PROCEDURES

For most claims under the federal employment discrimination statutes, before filing a lawsuit, you must first file a charge with the U.S. Equal Employment Opportunity Commission (EEOC) and receive a Notice of Right to Sue.

Did you file a charge of discrimination against the defendant(s) with the EEOC or any other government agency?

☒ Yes (Please attach a copy of the charge to this complaint.)

When did you file your charge? 4-27-17

☐ No

Have you received a Notice of Right to Sue from the EEOC?

☒ Yes (Please attach a copy of the Notice of Right to Sue.)

What is the date on the Notice? 6-27-17

When did you receive the Notice? 6-30-17

☐ No

VI. RELIEF

The relief I want the court to order is (check only those that apply):

☐ direct the defendant to hire me

☐ direct the defendant to re-employ me

☐ direct the defendant to promote me

☐ direct the defendant to reasonably accommodate my religion

☐ direct the defendant to reasonably accommodate my disability

☒ direct the defendant to (specify) (if you believe you are entitled to money damages, explain that here)

Entitlement includes Severance (3 weeks) for every
year worked plus 3 (20 days) post wages 2016) all
accrued Sick Time - PTO - 2017 Merit Increase all
entitled bonuses 2016 through 2017 - Potential Future Income

VII. PLAINTIFF'S CERTIFICATION

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

12-13-17
Dated

[Signature]
Plaintiff's Signature

Andrew L HARDY
First Name Middle Initial Last Name

91 Stebbins Rd
Street Address

Putnam Carmel N.Y. 10512
County, City State Zip Code

(914) 490-0558 SP142150@yahoo.com
Telephone Number Email Address (if available)

I have read the attached Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

☒ Yes ☐ No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION INTAKE QUESTIONNAIRE

Please immediately complete this entire form and return it to the U.S. Equal Employment Opportunity Commission ("EEOC"). **REMEMBER**, a charge of employment discrimination must be filed within the time limits imposed by law, within 180 days or in some places within 300 days of the alleged discrimination. When we receive this form, we will review it to determine EEOC coverage. Answer all questions completely, and attach additional pages if needed to complete your responses. If you do not know the answer to a question, answer by stating "not known." If a question is not applicable, write "N/A." (PLEASE PRINT)

1. Personal Information

Last Name: Hardy First Name: Andrew MI: L
 Street or Mailing Address: 91 Stebbins Rd Apt or Unit #: _____
 City: Carmel County: Putnam State: NY Zip: 10512
 Phone Numbers: Home: (914) 490-0558 Work: () _____
 Cell: () _____ Email Address: Sp142150@yahoo.com
 Date of Birth: 11-27-1963 Sex: ☒ Male ☐ Female Do You Have a Disability? ☐ Yes ☒ No

Please answer each of the next three questions. i. Are you Hispanic or Latino? ☐ Yes ☐ No

ii. What is your Race? Please choose all that apply. ☐ American Indian or Alaskan Native ☐ Asian ☐ White
☒ Black or African American ☐ Native Hawaiian or Other Pacific Islander

iii. What is your National Origin (country of origin or ancestry)? Jamaican

Please Provide The Name Of A Person We Can Contact If We Are Unable To Reach You:

Name: Lynette Hardy Relationship: Wife
 Address: 91 Stebbins Rd City: Carmel State: NY Zip Code: 10512
 Home Phone: (914) 438-3092 Other Phone: () _____

2. I believe that I was discriminated against by the following organization(s): (Check those that apply)

☒ Employer ☐ Union ☐ Employment Agency ☐ Other (Please Specify) _____

Organization Contact Information (If the organization is an employer, provide the address where you actually worked. If you work from home, check here ☐ and provide the address of the office to which you reported.) If more than one employer is involved, attach additional sheets.

Organization Name: Forest City Realty Trust
 Address: _____ County: _____

City: _____ State: _____ Zip: _____ Phone: () _____

Type of Business: Real Estate Job Location if different from Org. Address: _____

Human Resources Director or Owner Name: _____ Phone: () _____

Number of Employees in the Organization at All Locations: Please Check () One

☐ Fewer Than 15 ☐ 15 - 100 ☐ 101 - 200 ☐ 201 - 500 ☒ More than 500

3. Your Employment Data (Complete as many items as you are able.) Are you a federal employee? ☐ Yes ☒ No

Date Hired: 3-1988 Job Title At Hire: Operating Engineer

Pay Rate When Hired: _____ Last or Current Pay Rate: _____

Job Title at Time of Alleged Discrimination: General Manager Date Quit/Discharged: _____

Name and Title of Immediate Supervisor: _____

If Job Applicant, Date You Applied for Job _____ Job Title Applied For _____

4. What is the reason (basis) for your claim of employment discrimination?

FOR EXAMPLE, if you feel that you were treated worse than someone else because of race, you should check the box next to Race. If you feel you were treated worse for several reasons, such as your sex, religion and national origin, you should check all that apply. If you complained about discrimination, participated in someone else's complaint, or filed a charge of discrimination, and a negative action was threatened or taken, you should check the box next to Retaliation.

☒ Race ☐ Sex ☐ Age ☐ Disability ☐ National Origin ☐ Religion ☐ Retaliation ☐ Pregnancy ☐ Color (typically a difference in skin shade within the same race) ☐ Genetic Information; circle which type(s) of genetic information is involved:
i. genetic testing ii. family medical history iii. genetic services (genetic services means counseling, education or testing)

If you checked color, religion or national origin, please specify: _____

If you checked genetic information, how did the employer obtain the genetic information? _____

Other reason (basis) for discrimination (Explain): _____

5. What happened to you that you believe was discriminatory? Include the date(s) of harm, the action(s), and the name(s) and title(s) of the person(s) who you believe discriminated against you. Please attach additional pages if needed.

(Example: 10/02/06 - Discharged by Mr. John Soto, Production Supervisor)

A. Date: 2-2017 Action: Denied my raise and part of performance see attached
Bonus based on a loosely written subjective incomplete UNFAIR review
Name and Title of Person(s) Responsible: Alan Schmiedlker - Senior VP

B. Date: _____ Action: _____

Name and Title of Person(s) Responsible _____

6. Why do you believe these actions were discriminatory? Please attach additional pages if needed.

History with this individual since 2011 include a demotion and covert
effort to remove me from my position in 2016

7. What reason(s) were given to you for the acts you consider discriminatory? By whom? His or Her Job Title?

Subjective Review with no facts & personal character attacks,
Personal opinion of my ability to actually perform a duty I have been Filled Years

8. Describe who was in the same or similar situation as you and how they were treated. For example, who else applied for the same job you did, who else had the same attendance record, or who else had the same performance? Provide the race, sex, age, national origin, religion, or disability of these individuals, if known, and if it relates to your claim of discrimination. For example, if your complaint alleges race discrimination, provide the race of each person; if it alleges sex discrimination, provide the sex of each person; and so on. Use additional sheets if needed.

Of the persons in the same or similar situation as you, who was treated better than you?

Full Name	Race, Sex, Age, National Origin, Religion or Disability	Job Title	Description of Treatment
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A. _____

B. _____

Of the persons in the same or similar situation as you, who was treated *worse* than you?

<u>Full Name</u>	<u>Race, Sex, Age, National Origin, Religion or Disability</u>	<u>Job Title</u>	<u>Description of Treatment</u>
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A. _____

B. _____

Of the persons in the same or similar situation as you, who was treated the *same* as you?

<u>Full Name</u>	<u>Race, Sex, Age, National Origin, Religion or Disability</u>	<u>Job Title</u>	<u>Description of Treatment</u>
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A. _____

B. _____

Answer questions 9-12 only if you are claiming discrimination based on disability. If not, skip to question 13. Please tell us if you have more than one disability. Please add additional pages if needed.

9. Please check all that apply:
- ☐ Yes, I have a disability
 - ☐ I do not have a disability now but I did have one
 - ☐ No disability but the organization treats me as if I am disabled

10. What is the disability that you believe is the reason for the adverse action taken against you? Does this disability prevent or limit you from doing anything? (e.g., lifting, sleeping, breathing, walking, caring for yourself, working, etc.).

11. Do you use medications, medical equipment or anything else to lessen or eliminate the symptoms of your disability?

☐ Yes ☐ No

If "Yes," what medication, medical equipment or other assistance do you use?

12. Did you ask your employer for any changes or assistance to do your job because of your disability?

☐ Yes ☐ No

If "Yes," when did you ask? _____ How did you ask (verbally or in writing)? _____

Who did you ask? (Provide full name and job title of person)

Describe the changes or assistance that you asked for: _____

How did your employer respond to your request? _____

13. Are there any witnesses to the alleged discriminatory incidents? If yes, please identify them below and tell us what they will say. (Please attach additional pages if needed to complete your response)

Full Name	Job Title	Address & Phone Number	What do you believe this person will tell us?
A. <u>NO</u>			

B. _____

14. Have you filed a charge previously on this matter with the EEOC or another agency? ☐ Yes ☒ No

15. If you filed a complaint with another agency, provide the name of agency and the date of filing: _____

Prior Harassment claim with another MGR in 2014 EEOC with HRA

16. Have you sought help about this situation from a union, an attorney, or any other source? ☐ Yes ☒ No
Provide name of organization, name of person you spoke with and date of contact. Results, if any?

Please check one of the boxes below to tell us what you would like us to do with the information you are providing on this questionnaire. If you would like to file a charge of job discrimination, you must do so either within 180 days from the day you knew about the discrimination, or within 300 days from the day you knew about the discrimination if the employer is located in a place where a state or local government agency enforces laws similar to the EEOC's laws. If you do not file a charge of discrimination within the time limits, you will lose your rights. If you would like more information before filing a charge or you have concerns about EEOC's notifying the employer, union, or employment agency about your charge, you may wish to check Box 1. If you want to file a charge, you should check Box 2.

BOX 1 ☐ I want to talk to an EEOC employee before deciding whether to file a charge. I understand that by checking this box, I have not filed a charge with the EEOC. I also understand that I could lose my rights if I do not file a charge in time.

BOX 2 ☒ I want to file a charge of discrimination, and I authorize the EEOC to look into the discrimination I described above. I understand that the EEOC must give the employer, union, or employment agency that I accuse of discrimination information about the charge, including my name. I also understand that the EEOC can only accept charges of job discrimination based on race, color, religion, sex, national origin, disability, age, genetic information, or retaliation for opposing discrimination.


Signature

4-27-2017
Today's Date

PRIVACY ACT STATEMENT: This form is covered by the Privacy Act of 1974: Public Law 93-579. Authority for requesting personal data and the uses thereof are:

- 1) **FORM NUMBER/TITLE/DATE.** EEOC Intake Questionnaire (9/20/08). 2) **AUTHORITY.** 42 U.S.C. § 2000e-5(b), 29 U.S.C. § 211, 29 U.S.C. § 626, 42 U.S.C. 12117(a)
- 3) **PRINCIPAL PURPOSE.** The purpose of this questionnaire is to solicit information about claims of employment discrimination, determine whether the EEOC has jurisdiction over those claims, and provide charge filing counseling, as appropriate. Consistent with 29 CFR 1601.12(b) and 29 CFR 1626.8(c), this questionnaire may serve as a charge if it meets the elements of a charge. 4) **ROUTINE USES.** EEOC may disclose information from this form to other state, local and federal agencies as appropriate or necessary to carry out the Commission's functions, or if EEOC becomes aware of a civil or criminal law violation. EEOC may also disclose information to respondents in litigation, to congressional offices in response to inquiries from parties to the charge, to disciplinary committees investigating complaints against attorneys representing the parties to the charge, or to federal agencies inquiring about hiring or security clearance matters.
- 5) **WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION.** Providing this information is voluntary but the failure to do so may hamper the Commission's investigation of a charge. It is not mandatory that this form be used to provide the requested information.

As described on the intake form my recent review, which was scathing and unlike any other review I have ever received within the company during my 28 years of service offered the following:

- Purposely and maliciously denied my compensation
- Ignored my functions and accomplishments at the center
- Attacked my professionalism, character,
- Included inaccurate and un substantiated, vague information
- Offered no action plan
- Ignored any information from direct report of 8 months for the 2016.
- An opportunity to exercise control and rebuke me on a personal level.

A rebuttal was sent in response to the review as I did not agree with the review and I requested an action plan to address any items of substance for which no mention of the rebuttal was ever had nor was an action plan ever established.

The SVP and myself have had weekly catch up meetings since September of 2016 and during those meetings no discussion of underperformance was ever a topic. The kamikaze style attack and intentional decision to hold back rightfully earned compensation this year is an atrocity and totally unacceptable and was malicious and even more so insulting when my entire staff that I lead on a day to day basis received their raises including those eligible for bonuses receiving them accordingly.

In 2011 I was demoted to the assistants position by this individual who did not think my property management experience was applicable to this project. When I asked to return to my last position at that time I was asked to stay on at this project as management felt I was needed there. In 2013 the project shifted back to Brooklyn and a decision was made by the Brooklyn group to eliminate one of the managers position and kept me in favor of the GM selected by the SVP. When the project was being transferred back to Cleveland in 2015 an email was inadvertently sent to me which had the C.O.O in a trail of the company discussing my position coming to a close circa March of 2016 stating "You know how I feel about him" with no contact with that individual ever I cant imagine where he drew his opinion of me from. It also came to my attention unbeknownst to the SVP that He had intended to move the prior GM back to replace me even though I had been successfully managing the project to that point.

The retail division as a whole in this company is underrepresented by people of African descent and as a whole in the industry supporting the desire for a white face to represent their facilities. The SVP and past antics of another regional manager in this company directed towards me specifically within this organization clearly outlines a culture conducive to this under belly of racist antics. Any investigation will show my true value to this company and specifically to the project and yet I am constantly under scrutiny and undermining by this group which clearly identifies a very toxic culture.

With comments like:

- We need you to get in line.
- “I don’t see you as a General Manager of a regional shopping center”
- You Micro manage
- You act like you’re on an island.
- You don’t know the marketplace
- You don’t know the numbers
- Your stubborn
- You are unfamiliar with the Marketplace.
- Asking me what does Andrew want during a conversation of what we do on the day to day here. My answer was to work where I was wanted. The response like the response to the review was silence.

The SVP’s toxic and volatile behavior has created an environment of distrust extending beyond myself and has purposely disengaged himself from creating an action plan to promote an healthy environment for growth and has disregarded my 28 years of service.

His behavior has created undue stress, has impacted my quality of life at home and at the job which is already high with the day to day activities we endure overseeing major construction projects such as LOWE’S and other projects. I love what I do but am finding it a burden to operate under such degrading conditions and management who don’t see me for what I do or have accomplished over my 28 years with this company but only the color of skin.

In summary:

I believe the retail environment expects the GM to have a certain look of which I clearly do not fit and in which the SVP would much prefer.

All I have done since this project opened is run it efficiently, effectively, creating monetary saving initiatives in every aspect of the operation, lead the charge in year over year sales growth, traffic growth and helped in maintaining a positive environment for our customers to enjoy. All this, while managing a project that has bounced back and forth between Brooklyn and Cleveland has struggled with obtaining lease deals have gone through mergers, a joint venture, a transition to a REIT and daily challenges beyond the norm.

Any thorough investigation will find that I am viewed by those who work with me on a daily basis as an influential, inspirational individual doing whatever is necessary and supporting all aspects of this project whether it be construction and development, operational or financial. I personally have sacrificed my time losing over 21 days in 2016 with no gratitude spent countless hours helping to get construction projects on schedule and have even been of assistance in designs that professionals were struggling with. I have been a key liaison with city agencies assisting in the expediting of plans and permits. Creating parking initiatives which yielded over 300k in revenue only to be told that the initiative did not create the windfall with no proof as to what created the positive increase.

I believe with all I have contributed that my race is a barrier in the eyes of the SVP as I don't have the look he desires and since he is the face of upper management I feel that it is systemic.

As this is one of multiple events I have had to endure since moving over into this division and with one complaint already on the books with HR for similar behavior (HARRASSMENT) I have no choice but to file a formal complaint against my employer FC Realty Trust.

- A Demotion in 2011
- A harassment charge filed in 2014
- A memo establishing my demise in 2015
- A negative review for 2016 and damaging comments in the review.

- Denial of my well deserved compensation
- Lack of acknowledgement of my achievements of 2016
- Lack of interest to even begin to understand my value to the project
- Lack of understanding of what my job functions are a failure on the manager's part.
- Inaction to my rebuttal of the negative review
- No implementation of an action plan
- A recent visit citing my incompetence was the cause of his visit
- A confrontation during the visit citing that I agreed to my AGM going to HR
- The question directed at me "What does Andrew Want"?

These and other historical actions have shattered my belief in a company I once so believed had the right vision and now seems to be spiraling away from their core values and are comfortable in bullying tactics and abuse of their power to neutralize people who don't look like them and may have too much institutional knowledge for their liking.

Sad and disturbing for sure.

TOLLING AGREEMENT

AGREEMENT made as of September 25 2017 (the “Effective Date”), by and between Andrew Hardy (“Mr. Hardy”) and Forest City Realty Trust, its employees, officers, agents, parents, and subsidiaries (collectively, “Forest City”) (Mr. Hardy and Forest City, together, the “Parties”).

WHEREAS, Mr. Hardy believes he may have certain claims against Forest City, including, but not limited to, claims under Title VII of the Civil Rights Act of 1964, the New York State and City Human Rights Laws, and claims arising under statutory, common law, or otherwise (collectively, “Claims”); and

WHEREAS, in order to comply with the statute of limitations or other deadlines applicable to the Claims, Mr. Hardy would be required to file a complaint or charge or initiate an administrative action within the time periods provided under those statutes or under the New York CPLR.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES STATED IN THIS AGREEMENT, IT IS AGREED AS FOLLOWS:

1. Mr. Hardy shall not serve or file a complaint or charge or commence any other legal or agency proceeding with respect to any of the Claims before October 25, 2017. As used herein, the term “Resumption Date” shall mean October 25, 2017.

2. (a) In the event that the Parties fail to resolve the Claims and Mr. Hardy commences a legal proceeding on or after the Resumption Date with respect to any of the Claims, Forest City shall not contend (and Forest City hereby waives any right to contend) that, solely by virtue of the passage of time between the Effective Date and the

Resumption Date, either that (i) any claim Mr. Hardy may assert is barred or (ii) any administrative agency or court is without jurisdiction to entertain any claim Mr. Hardy may assert solely by virtue of the passage of time between the Effective Date and the Resumption Date. **For the avoidance of doubt, the statute of limitations or other deadlines with respect to Mr. Hardy's claims are tolled for a period of 30 days. Nothing in this Agreement shall be deemed to revive any of the claims that are barred as of the date of this Agreement.**

(b) Forest City agrees not to oppose any good faith application Mr. Hardy may make to any court to effectuate the waiver provided for by ¶ 2(a).

(c) Mr. Hardy agrees that Forest City is not waiving any defense otherwise available to Forest City including, without limitation, lack of jurisdiction, exhaustion of remedies, and statutes of limitations with respect to any limitations period that expired prior to the Effective Date or after the Resumption Date.

3. Nothing in this Agreement shall be construed as an admission of liability by Forest City as to the merits of any of Mr. Hardy's Claims.

4. This Agreement shall be considered a part of the settlement process and confidential between the Parties and is not admissible and may not be disclosed **or offered or received in evidence for any purpose** except for the limited purpose of enforcing its terms, and cannot be used for any other purpose.

5. The Parties to this Agreement represent that each of them has been represented by counsel in connection with the making and execution of this Agreement and has entered into this Agreement voluntarily and without pressure or duress from the

other party. The attorneys executing this document represent that they have the authority to execute on behalf of their clients.

6. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all other prior discussions, agreements, and understandings, both written and oral, among the Parties with respect thereto.

7. All questions concerning the construction, validity, interpretation, or performance of this Agreement shall be governed by New York law, without giving effect to that state's principles regarding conflict of laws.

8. No change or modification of this Agreement shall be valid unless it is contained in writing and signed by the Parties hereto.


WHEREFORE, the Parties have entered into this Agreement on the date set forth above.

ANDREW HARDY

FOREST CITY REALTY TRUST

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Attorneys for: Forest City

Dated: September 25, 2017

Dated: September 25, 2017



2016 Performance Wrap Up and Review Standard

Review Period 1/1/2016 - 12/31/2016



REVIEWER

Alan Schmiedicker (Manager)

Andrew Hardy

General Manager
Jobcode

Overview


Employee Details

Department	NY Bldg Mgt Office Admn
SBU code	New York
Location	FC Yonkers Associates, LLC
Hire Date	3/6/1989
Manager	Alan Schmiedicker

Accomplishment of Goals

Operations

continue to work on reducing energy expenditures and optimize each aspect of the operation to ensure that productivity and asset preservation are secured.

Start Date 1/1/2016	Due Date 12/31/2016	Status On Track
Progress  0%	Perspective Operational Excellence	

Reviewer	Rating
Andrew Hardy (Self)	Goal partially completed
Alan Schmiedicker (Manager)	Goal completed

Comments

Andrew Hardy (Self):

Capital projects phase 1 complete and phase 2 street lighting substantially completed. Wall pack and exterior lighting projects slated for 2017 will complete energy initiatives to reduce overall KWh consumption at the center.

Alan Schmiedicker (Manager):

Andrew understands operations and is very in touch with all things operations

CRM implementation in NY retail portfolio

Get trained in CRM and begin to load data into the system so that tenant information can be used by leasing and Asset management team

Start Date 1/1/2016	Due Date 12/31/2016	Status On Track
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Progress

Perspective
0% Operational Excellence

Reviewer	Rating
Andrew Hardy (Self)	Goal partially completed
Alan Schmiedicker (Manager)	Goal partially completed

Comments

Andrew Hardy (Self):

No formal training was provided but was able to work with team to begin the process and will continue to work through for understanding of system as necessary.

Alan Schmiedicker (Manager):

The CRM team identified multiple opportunities for Andrew to get trained. For reasons not clear to me, there was no formal training and Andrew continues to struggle with CRM. There has been some improvement recently, but much more must be done to take full advantage use the system as expected

Performance Self Review

Provide your overall assessment of performance for the review period (response required)

Comments

Andrew Hardy (Self):

2016 was a transitional year between FC Enterprises and FCRC along with the QIC joint venture. Supporting the transition and provisioning all the necessary information to successfully complete these transactions were rewarding.

Overseeing the Rockin' JUMP project and ensuring a November open along with Managing the Lowe's project site delivery on time and overseeing the commencement of Lowe's construction allowed me to utilize my skills to the fullest and support the project fully.

I have learned that a project such as Ridge Hill provides access to every aspect of Retail and property management and teaches me something different about the business on a regular basis.

OPTIONAL: Use this space to record additional goals worked on during the performance period that are not already recorded in the Goals section

Career Interests

Associate and manager: use the space below to describe and comment on future career interests (response required)

Comments

Andrew Hardy (Self):

Career interests include continuing to be a team player working towards the common goal of making this project as successful as possible.

Alan Schmiedicker (Manager):

Andrew needs to become more well rounded as a GM/Asset Manager. The position requires **much more** than an operational outlook

Goal Planning**Holiday 2017**

Work with management and Marketing to prepare for a Holiday season sans Dreamhouse.

Start Date	Due Date	Status
1/1/2017	8/1/2017	On Track
Progress	Perspective	
0%	Other	

LOWE'S OPEN

To successfully support Grand opening of LOWE'S HOME IMPROVEMENT on or around their scheduled open of mid to late April.

Start Date	Due Date	Status
1/1/2017	4/20/2017	On Track
Progress	Perspective	
0%	Other	

Strategic plan

To work with senior management and leasing in the implementation of a strategic plan which will effectively strengthen the retail at the Center allowing for an aggressive model to spur growth and create a spiraling effect in an area that struggles the most at this project.

Start Date	Due Date	Status
1/1/2017	12/31/2017	On Track
Progress	Perspective	
0%	Other	

Preparing for the Review Meeting

and stop. I know past supervisors have advised him of the same. No reason to continue talking to fill dead space.

Time Management -Andrew can be very difficult to get a hold of . I have personally left messages and sent emails that go unanswered for significant periods of time (days). Others have told me they never get return calls. I am willing to believe that this may be because Andrew is very busy, but no one is calling to just chat! There is a reason and Andrew needs to answer calls and reply to emails at a much faster pace. No calls should go unreturned at the end of each day. Few, if any projects are ever completed early. Almost all reports etc from RH come at the last moment or late. Calls are made asking for the information on a consistent basis. Is Andrew spending enough time at the property?

Attention to Detail - Andrew does not pay attention to details. I have experienced this in many regards, but specifically in dealing with Rent issues. He talks in generalities as opposed to real numbers. He submits numbers in deals that are not correct, this is the result of Andrew not willing to get help and rely on others for information.

Failure to use team resources. There is no better description of this problem than Andrews failure to use the AR team in Cleveland. They are experienced and assigned responsibility to assist the GM's in rent collection. Andrew does not use them and their expertise. This results in addtl work being created at home office as deals have to be re-done to adjust for correct numbers. Use the team in place and don't make it harder than it has to be. The AR team is there to help you do your job. AR will be glad to wear the "black hat" and let you be the good guy with tenants that you deal with on a daily basis. There has been some better communication with this team, but there is much more that must be done.

Lack of or failure to use Financial acumen - Get out of the Ops Manager mode. I need Andrew to become a GM/Asset Manager. He spends too much time on operations and needs to have a better understanding of the numbers. I do not get the sense that he truly understands the cash flows. 2015 CAM reconciliations were difficult as improper coding was supplied and had to be painstakingly corrected. Andrew needs to better understand the difference between invoicing for office, mall and garage as we need those calculations and coding done correctly. These skills will become even more important with a transition to QIC and the requirements they have for reporting. Budget creation and monthly variance reporting are a challenge for Andrew, Whether due to lack of true understanding of the numbers or a failure of spending the proper time, I have very little faith that Andrew understands the financial information for Ridge Hill

Failure to Delegate - Andrew micro manages all aspects of the property and I fail to see that David Shore has control of any aspect of the project. Is that due to failure to delegate on Andrews part or failure on David's part. I had one person tell me "Andrew is a micro manager and not good at delegating." A property of this size needs much help and David and others need to be used to help. I have no direct conversations with David on any aspect of RH

I and Team members in Cleveland are frustrated with Andrews performance. While Andrew is a quality individual, he needs to improve his management skills and get with the regional mall program methods of operation and reporting. He needs to use the structure in place to make his job easier and not fight the system. He needs to be timely in his responses both for calls and email correspondence, needs more active listening skills, needs to be better at meeting deadlines and not expecting everyone to adjust to his last minute needs, he needs to better understand the numbers, delegate more responsibilities to his team and in general use the team in place to help him accomplish the mission.

Andrew does not meet expectations for a GM at a regional shopping center such as RH. If Andrew cannot make these improvements and changes it will be difficult for him to stay in his current position.



2015 Performance Wrap Up and Review Standard

Review Period 3/1/2015 - 12/31/2015



REVIEWER

Thomas Onorato (Manager)

Andrew Hardy

General Manager

Jobcode

Overview

Employee Details

Department	NY Bldg Mgt Office Admn
SBU code	New York
Location	FC Yonkers Associates, LLC
Hire Date	3/6/1989
Manager	Thomas Onorato

Accomplishment of Goals

General Manager

Ensure timely accounting information by working with newly appointed accounting team.

Start Date	Due Date	Status
1/1/2015	12/31/2015	On Track

Progress	Perspective
0%	Operational Excellence

Reviewer	Rating
Andrew Hardy (Self)	Goal completed
Thomas Onorato (Manager)	Goal on track / in progress

Comments

Thomas Onorato (Manager):
Continue working with the accounting department to meet all deadlines

Performance Self Review

Provide your overall assessment of performance for the review period (response required)

Comments

Andrew Hardy (Self):
I worked diligently with our accounting team to ensure that reports and all aspects of accounting were stabilized for 2015 and successfully met that goal despite administrative disruptions in the first quarter.

OPTIONAL: Use this space to record additional goals worked on during the performance period that are not already recorded in the Goals section

Career Interests

Associate and manager: use the space below to describe and comment on future career interests (response required)

Comments

Andrew Hardy (Self):

Continue to stabilize Ridge Hill and grow the asset.

Thomas Onorato (Manager):

I agree with Andrew that his main goal is to continue to develop the asset and run it in accordance with FCE policies

Goal Planning

Operations

continue to work on reducing energy expenditures and optimize each aspect of the operation to ensure that productivity and asset preservation are secured.

Start Date

1/1/2016

Due Date

12/31/2016

Status

On Track

Progress

Perspective

0% Operational Excellence

Preparing for the Review Meeting

OPTIONAL: Record additional questions or comments you wish to discuss in the review meeting.

Completing the Review - Associate Instructions

Performance Review and Commentary

Overall performance rating for review period

Reviewer**Rating****Thomas Onorato** (Manager)

Exceeds expectations

Comments**Thomas Onorato** (Manager):

Andrew has continued to develop his retail management skills, and has over seen many construction projects and other new programs during this review period, all of which were highly successful.

Summary**Overall Rating****2015 Performance Wrap Up and Review Standard**

Andrew Hardy

Exceeds expectations**Manager Acknowledgement**

X Tom Onorato
Manager

3/3/2016
Date

Associate Acknowledgement

X andrew hardy
Associate

3/3/2016
Date